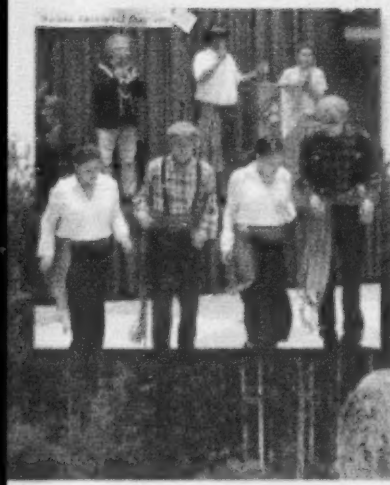
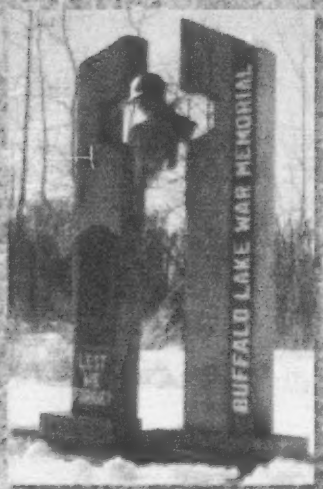


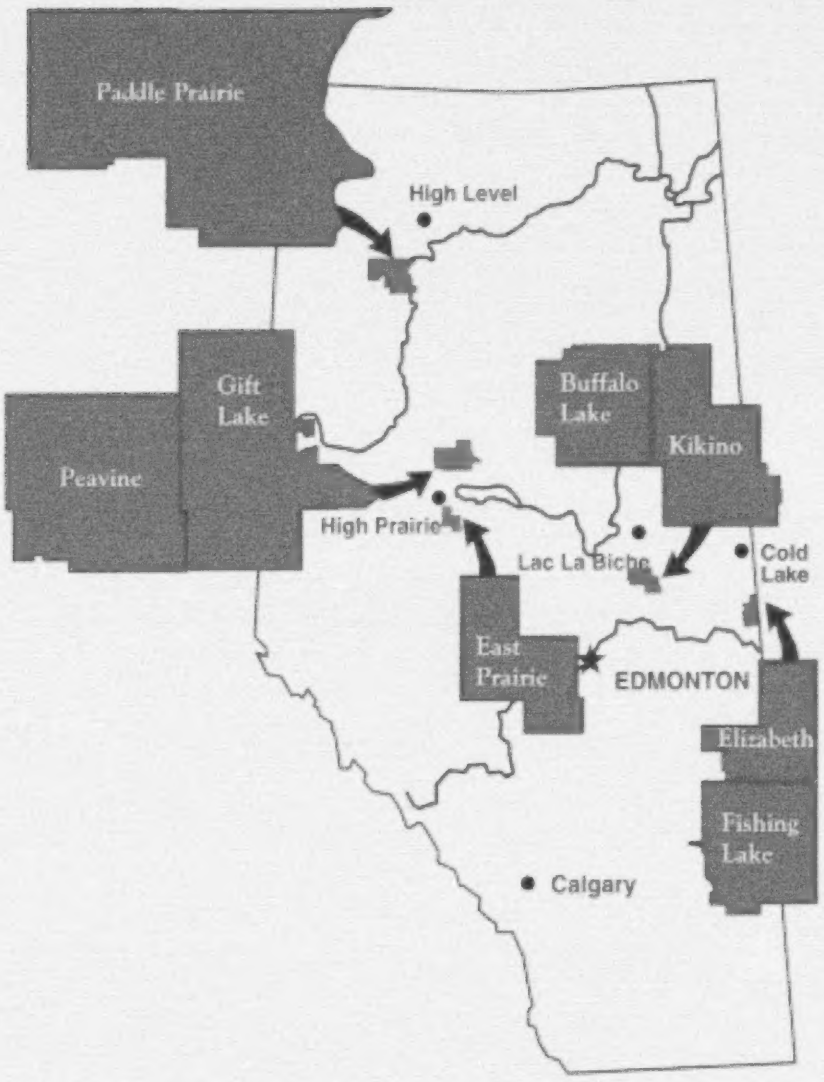
MSAT

METIS SETTLEMENTS APPEAL TRIBUNAL

2004 ANNUAL REPORT



THE METIS SETTLEMENTS IN ALBERTA



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LETTER FROM THE CHAIR

Dear Minister and General Council President

This Annual Report reflects the nature of the activities of the Tribunal and the general manner in which it deals with matters coming before the Tribunal.

The Metis Settlements Appeal Tribunal is a quasi-judicial body. It is in the business of resolving local governing disputes on membership applications, land applications and surface access for oil and gas resources.

The Tribunal attempts resolution of appeals and inquiries in a consistent, timely, efficient, impartial and knowledgeable manner. We take into consideration the cultural aspects of the Metis settlement people.

In 2004, new legislation and increased jurisdiction was partially enacted that impacts the Tribunal. In 2005, the remainder will be proclaimed.

Unique issues were addressed in appeals in the 2004 Tribunal Decisions. One of these resulted in the need to consider the Charter of Rights in a membership dispute. A summary is found at the end of this Report.

With the two Settlement Council elections in 2004 (May and October), the Tribunal staff was kept extra busy working with new Councils, and their staff, to develop relationships and an understanding of how the Tribunal operates and deals with matters that can be appealed.

Focusing on the use of alternative dispute resolution techniques, the Tribunal was able to reduce the number of hearings through negotiated agreements between the parties, or working with Councils to make decisions they are empowered to make.

Thanks to all the Tribunal members and staff members for their efforts and commitment, and the expertise they exercised in order to protect the public interest in the Settlements.

I hope you find this report helpful in understanding who we are, and what we do in the Metis governance area.

Andre L'Hirondelle

Mission

The mission of the Tribunal is to contribute to the self-sufficiency of Metis life by providing resolution of issues affecting the progress of Settlements and individuals. In providing this assistance, the Tribunal believes the following is fundamental:

The Tribunal's focus is to ensure justice is dispensed using principles of law as a tool, not as an ultimate objective.

Disputes are settled in an effective and timely manner, with the least possible disruption of Metis life and relationships. To achieve this, alternative dispute resolution mechanisms are incorporated into Tribunal processes.

Decisions of the Tribunal are carried out using its own processes, supplemented by other legislation.

Settlement Councils and members are informed of the Tribunal's role, so appropriate issues can be brought forward.

Who We Are

The Metis Settlements Appeal Tribunal was established in 1990 when the *Metis Settlements Act* was passed. Designed to provide practical and unbiased solutions to some of the day-to-day disputes facing the Settlements, the Tribunal has jurisdiction to hear disputes concerning membership and land allocation decisions made by Settlement Councils. It also has jurisdiction over various areas identified in the Policies of the Metis Settlements General Council which include timber, financial interests, and descent of property.

Another significant role of the Tribunal is to administer and resolve disputes about access to and compensation for use of Settlement land. This was handled by the Surface Rights Board prior to November 1, 1990. The Land Access Panel (LAP) of the Metis Settlements Appeal Tribunal is now responsible for administering right of entry and compensation orders and resolving disputes between operators, Settlements and/or members.

The Existing Leases Land Access Panel (ELLAP) is a standing panel of the Tribunal. This panel deals with surface access issues involving existing mineral lease holders. An existing mineral lease holder is a resource company that holds a mineral lease granted by the provincial government before November 1, 1990.

The Tribunal can hear disputes referred to it by provincial legislation, General Council Policies, or Settlement bylaws, or if all parties agree to have the Tribunal settle the matter.

Tribunal Members

There are seven members of the Tribunal, all of whom are appointed under the *Metis Settlements Act* for four-year terms. The Tribunal Chair is appointed by the Honourable Pearl Calahasen, Minister of Aboriginal Affairs and Northern Development from a list provided by the Metis Settlements General Council. Three Tribunal members, including one vice-chair, are appointed by the Metis Settlements General Council. Three Tribunal members, including one vice-chair, are appointed by the Minister of Aboriginal Affairs and Northern Development.

Standing (L–R) – Ken Allred, John Brosseau, Joyce Parenteau, Richard Anderson (resigned Sept. 6/04)
Sitting (L–R) – Randy Anderson, André L'Hirondelle, Lorne Dustow
Missing – Harvey Anderson (Effective Nov. 1/04)

Tribunal Chair

André L'Hirondelle

Born and raised on the East Prairie Metis Settlement, André grew up learning about the issues facing Aboriginal peoples. André has been continuously employed over the last 25 years in the area of Aboriginal governance, working with the Alberta Federation of Metis Settlement Associations, the East Prairie Metis Settlement Council, and over the last 16 years with the Alberta Government on the administration of Metis Settlements legislation.

General Council Appointees

Lorne Dustow – Vice-Chair

A member of the Fishing Lake Metis Settlement, where he resides with his wife and family, Lorne has acted in many capacities while in Fishing Lake, including Settlement Administrator and Bylaw and Policy Analyst. This is Lorne's first term serving on the Tribunal.

Joyce Parenteau – Tribunal Member

Joyce is an active member of Paddle Prairie Metis Settlement, where she was born and raised. She lives with her husband of 40 years, with whom she has 3 daughters. She worked for Northland School Division for 26 years. In 2000, Joyce received an Esquao Award, an honour bestowed upon women who make outstanding contributions to the community. She is currently serving on the Region 10 Child and Family Services Board. This is Joyce's first term serving on the Tribunal.

Harvey Anderson – Tribunal Member

Harvey is from Gift Lake Metis Settlement. His past community involvement was with the Youth Justice Committee, and working as a Youth Conference Facilitator with the Junior Forest Wardens. Harvey has also worked with the R.C.M.P. and Gift Lake Police Bylaw Enforcement. He was the recipient of the 1993 Metis Youth Role Model of Alberta. This is his first term, joining MSAT November 1, 2004, while attending the Hotel Management Program.

Ministerial Appointees

Randy Anderson – Vice-Chair

Randy is a member of the Gift Lake Metis Settlement. His past experience includes being Chairman of the Peace Arch Community Committee and Treasurer for the Metis Settlements General Council. During the past 12 years, Randy has been a successful businessman and is currently owner/operator of two businesses in Northern Alberta. This is Randy's first term serving on the Tribunal.

John Brosseau – Tribunal Member

Dr. John F. Brosseau was born in St. Paul, Alberta, and is a long time resident of Edmonton. He received his B. Ed, M. Ed and PhD in Education from the University of Alberta. John continues to be involved in a number of community activities, including sitting on the Edmonton Police Commission. This is John's third consecutive term serving on the Tribunal.

Ken Allred – Tribunal Member

Ken Allred has over 25 years experience on disciplinary, planning and development tribunals as both a chair and a member. Ken has been involved in arbitration and community mediation involving boundaries, surface rights, and aboriginal issues. As a professional land surveyor, he served as a lecturer, author, trainer, expert witness, land titles consultant, municipal councillor and administrator. This is Ken's second term serving on the Tribunal.

EXISTING LEASES LAND ACCESS PANEL

The Chair is jointly appointed by agreement of the Minister responsible for resource development and the Métis Settlements General Council.

Wayne G. Carter – Chair
President and Chief Executive Officer of Lamplighter Energy Ltd. since June 2000; Consulting Landman; President of Lenyoran Enterprises Ltd., a private company; a director of Hampton Court Resources Inc., a public oil, gas, and mining company listed on the TSXV; past President of the Canadian Association of Petroleum Landmen.

Wayne has been the Chair of ELLAP since 1990.

One ELLAP member is appointed by agreement of the Canadian Petroleum Association, the Independent Petroleum Association of Canada, the Small Explorers and Producers Association of Canada and the Canadian Association of Landmen.

Merv Henkleman – Member
President and General Manager of Canadian Landmasters Resource Services Ltd. since 1988. A member and former director of the Canadian Association of Petroleum Landmen.

Merv has been a member of ELLAP since 1990.

One ELLAP member is appointed by the Minister of Energy.

Michael Day – Member
Michael Day, OP. Geol. B.Sc. (London, 1954); exploration geologist in Western Canada 1954-64; taught geology at NAIT 1964-71; joining the (now) Alberta Department of Energy, as assistant deputy minister responsible for oil, gas and other mineral resources 1974-93. He formed M J DAY Resource Consulting Ltd. following retirement from public service.

This is Michael's second year as a member of ELLAP.

Two ELLAP members are appointed by the Métis Settlements General Council.

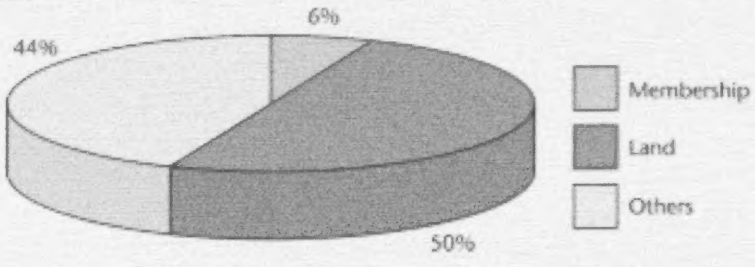
Lorne Dustow – Member
This is Lorne's first term serving on ELLAP. He is also a member of the Métis Settlements Appeal Tribunal.

Vacant ELLAP – Member

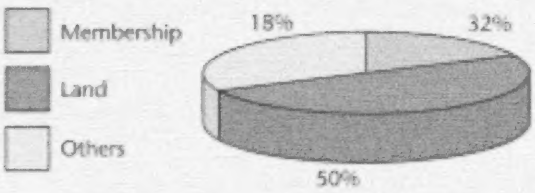
Appeal Activities

The Tribunal received 32 appeals in 2004, 19 of which did not progress into a complete investigation as they were either withdrawn by the appellants or found by the Tribunal as having no merit or beyond its jurisdiction. A majority of the appeals received concerned land (50%), which also comprised the majority of appeals referred to the Tribunal annually since 1998. Matters falling into MSAT 's other areas of jurisdiction include descent of property, infringement on property, housing allocation, and compensation, increased in 2004.

Type of Appeals Received



Year 2004



5-Year Average (1999 – 2003)

Appeals by Settlement

Settlement	1999	2000	2001	2002	2003	5-Yr Ave (1999 - 2003)	2004
Buffalo Lake	3	8	4	2	0	4	5
East Prairie	4	5	2	8	10	5	2
Elizabeth	3	0	1	3	2	2	4
Fishing Lake	6	3	0	2	7	3	13
Gift Lake	2	2	1	4	2	2	2
Kikino	4	2	2	0	5	3	4
Paddle Prairie	7	8	2	4	5	5	1
Peavine	2	17	13	8	6	10	1
Total	**31**	**45**	**26 ***	**32 ***	**37**	**34**	**32**

* Includes appeals received from Metis Settlements Land Registry

Orders Issued

1999	2000	2001	2002	2003	5-Yr Ave (1998-2002)	2004
14	9	22	14	11	13	6

The reduction in Orders Issued as a percentage of appeals was achieved through more mediated dispute resolution, and less hearings.

Surface Rights Activities

In 2004, 61 applications were processed which resulted in the Land Access Panel issuing 53 orders. The applications involved change of existing mineral lease holder (43), change of occupant (5), partial termination/termination of right of entry order (5), and amendments to compensation provisions (8). Please note one order may address more than one application.

In addition, an Existing Mineral Lease Holder and a Settlement submitted joint applications for additional surface access which resulted in the Existing Leases Land Access Panel issuing 5 new right of entry orders.

MSAT received over 400 telephone inquiries relating to LAP and ELLAP jurisdiction. A majority of the inquiries initiate complete reviews of the right of entry order files. In most cases, this involved an educational component on MSAT processes and procedures.

METIS SETTLEMENT RELATIONS

The Tribunal continued its efforts to raise its profile with the Settlements. In this vein, it began and continued several initiatives.

PUBLICATIONS

In addition to various brochures explaining MSAT and its processes, we occasionally publish in the Metis Settlements Messenger, a magazine sent to every household in the Metis Settlements. We published several articles and bulletins about our services over the last year and will continue to do so. MSAT distributed over 130 information packages in 2004.

WEBSITE

MSAT's website (www.msat.gov.ab.ca) has been online for five years. This website is hosted by the Alberta Government's server and Tribunal staff have full editorial and creative control. The website is an excellent source of information on the Tribunal and the interest and use of the site continues to increase. It received 7,463 hits in 2004, an increase of over 35% from 2003.

The site is constantly being expanded and modified to give more valuable information on MSAT and its processes for Settlement Councils, Settlement members, and interested parties.

CONFERENCES

Tribunal members and staff have participated in conferences on and off Settlements to raise awareness of both the Metis Settlements and the Tribunal.

Examples include making a presentation at the annual Metis Settlements Elders/Youth Conference.

In addition to the many presentations explaining the appeal process, staff were available to discuss issues on a one-on-one basis and to hand out resource materials.

SETTLEMENT INFORMATION SEMINARS

MSAT staff provided information to settlement staff, Councils and industry representatives assigned to Land Access issues through meetings, educational forums, and ongoing settlement visits.

FINANCIAL ACCOUNTABILITY

The Tribunal reports its financial activities consistent with the provincial government's fiscal year reporting period from April to March of the following year.

The table compares Tribunal expenditures for 2003/04 with those of 2002/03.

The source of the Tribunal's budget is public funds allocated by the Alberta Government. As such, the Tribunal has been and continues to be cautious when managing its funds. The Tribunal strives to reach a balance of maximizing productivity while maintaining targets of spending less. The Tribunal follows accounting practices and financial controls that are in place across the Alberta Government.

Each year, the Tribunal sets aside a portion of its budget for ELLAP (Existing Leases Land Access Panel) activities and legal requirements. There were no ELLAP activities this year.

The budget deficit was attributed to the increased contract legal counsel requirements for a Membership Decision, and subsequent appeals relating to the Charter of Rights.

	2003/2004		2002/2003	
	Authorized Budget	Actual Expenditure	Authorized Budget	Actual Expenditure
Manpower	$391,100	$386,704	$350,000	$345,126
Supplies & Services	$538,900	$580,296	$573,000	$585,333
Total	**$930,000**	**$967,000**	**$923,000**	**$930,459**
Surplus (Deficit)		$(37,000)		$(7,459)

JANUARY 2004 – DECEMBER 2004 SUMMARY

These Orders are summaries only. They are meant to provide ease of understanding of MSAT's decisions on particular subject matters. These summaries are not meant to provide legal authority, as all circumstances are different. Please refer to the full Order, available at MSAT's office to ensure complete understanding of the Order.

MSAT Order No. 153 - Replaced

Date Issued: 15 June 2004
Parties: Ryck Chalifoux (Appellant) vs. Settlement Council of Fishing Lake Metis Settlement (Respondent) and Ross George Calliou (Affected Party)
Issue: Descent of Property

Brenda Calliou died without leaving an estate instruction on her Metis title and allotment interests in the Settlement. According to Section 7.9(3) of the Metis Settlements General Council Land Policy, the settlement is the land trustee if an interest holder dies without appointing a land trustee. The trusteeship, however, has to be registered with the Metis Settlements Land Registry (MSLR) per Section 7.11 of the Land Policy. The Fishing Lake Metis Settlement was registered as the land trustee for Brenda's Metis title interest but not on her allotment interest as the Settlement failed to submit the required form to the MSLR. The allotment interest expired before the Council's motion to transfer both interests (Metis title and allotment) to Ross Calliou, Brenda's common-law husband. Ryck Chalifoux, brother of the deceased, appealed on behalf of Brenda's son, Colin Calliou, this decision of the Settlement Council to transfer Brenda's interests to Ross Calliou.

The Panel found Ross Calliou is the spouse of the deceased as defined in Section 7.2 of the Land Policy. Hence, the Panel decided Ross should receive Brenda's land interests. The Panel confirmed the Settlement Council's decision to transfer the Metis title to Ross but found the Settlement Council erred in transferring the expired allotment interest.

In accordance with Section 51 of the MSLR Regulations, the Panel ordered the Registrar to register both interests (Metis title and allotment) to Ross Calliou. The Panel also directed the Settlement to pay to Ross any compensation payable relative to the parcels in accordance with Section 3(2) of Compensation Distribution By-law of the Settlement.

ORDERS ISSUED

MSAT Order No. 157 and its Supplementary Decision

Date Issued: May 6, 2004
Parties: Rene Albert Cunningham, Jr. (Appellant) vs. Peavine Metis Settlement (Respondent)
Issue: Upgrading of Provisional Metis Title to Metis Title

Rene Cunningham alleged that he submitted an application for a Metis title to the Peavine Metis Settlement in the spring of 2000. The application was for a parcel of land he had a PMT on, but would soon expire. The Settlement Council could not find a copy of the said application, hence, did not make a decision. Mr. Cunningham made numerous follow-ups to the Settlement office and waited for the Council to make a decision on his application. When the land was posted as available land, he appealed to the Tribunal the lack of Council's decision on his application and requested that a "freeze" be placed on the land to give the Tribunal enough time to review his appeal.

The Land Panel of the Tribunal issued two decisions on this case. The first, an interim ex parte decision issued on July 11, 2002, ordered the Registrar of the Metis Settlements Land Registry not to make any amendments to the registry on the land until a much later decision is issued. In the second decision (this Order), the Panel renewed Mr. Cunningham's PMT for another five years.

The Panel determined it is only fair for Mr. Cunningham to retain an interest on the land considering the improvements he had made thereon and the circumstances surrounding his application.

The Panel also strongly recommended to the Peavine Metis Settlement to make a by-law setting out the conditions to be met for the transfer of Metis title and for renewing a PMT. The by-law should provide a better understanding of conditions to be met under these circumstances and facilitate decision-making of the Settlement Council.

Supplementary Decision

The supplementary decision issued on November 24, 2004 clarified that Mr. Cunningham is entitled to compensation from the May 29, 1995 to May 30, 2009.

MSAT Order No. 158

Date Issued: May 5, 2004
Parties: Judy Anne Stewart (Appellant) vs. Settlement Council for the Peavine Metis Settlement (Respondent)
Issue: Land Dispute

Judy Anne Stewart appealed to the Tribunal the Settlement Council's lack of decision on her application to renew her PMT interest before expiration. The Settlement Council did not make a decision within the required 45 day period of receiving the application.

Upon consideration of evidence submitted to the Tribunal and presented during the hearing, the Panel denied the application to renew the PMT interest made by Judy Anne Stewart. The Panel found Ms. Stewart did not satisfy the term set out in the Memorandum of Provisional Metis Title, which is:

1. Possession
   (2) If you have not received Metis title to the land at the end of the first 5 year term, but in the Settlement's opinion you are productively using the land and have made satisfactory progress on improvements, you can renew this grant for one more 5 year term.

Clearing just part of the parcel is not a satisfactory progress on improvement. The Panel, however, deemed it appropriate to compensate Ms. Stewart for her efforts to clear the land. The Peavine Metis Settlement was ordered to pay Ms. Stewart for this improvement.

ORDERS ISSUED

MSAT Order No. 159

Date Issued: 20 May 2004
Parties: Tina Lanceleve (Appellant) vs. Settlement Council for the Elizabeth Metis Settlement (Respondent)
Issue: Membership Refusal

Tina Lanceleve applied for membership in the Elizabeth Metis Settlement. The Settlement Council denied her application for reasons that: (a) Ms. Lanceleve was a registered Indian under the *Indian Act*; and (b) the parents she listed in her application are not her biological parents. Ms. Lanceleve appealed the decision of the Council not to grant her membership.

Under Section 75 of the *Metis Settlements Act*, an Indian registered under the Indian Act is not eligible to apply for membership. However, he/she may be approved as a settlement member if:

(a) the person was registered as an Indian when less than 18 years old;

...

(c) one or both parents of the person are, or at the time of their death were, members of the settlement.

...

The Panel found that while Ms. Lanceleve is a registered Indian, she was registered when she was still an infant. Hence, under Section 75(2)(a) of the Act, she may be approved for settlement membership. It was also found that while her so-called parents are not her biological parents, they raised her as their own daughter. They adopted Ms. Lanceleve the "Native way" when she was still an infant and without the formality of legal adoption. The Panel decided that they are Tina Lanceleve's parents and that she satisfies Section 75(2)(c) of the Act.

The Tribunal ordered the Settlement Council to reconsider Tina Lanceleve's application for membership in view of the foregoing.

MSAT Order No. 160

Date Issued: 03 October 2004
Parties: Hazel Vicklund (Appellant), Peavine Metis Settlement (Respondent), Judy Willier (Affected Party) and Minister of Justice and Attorney General of Alberta (Intervener)
Issue: Settlement Membership of a Registered Indian

MSAT Order No. 160 concludes an appeal that challenges the Settlement Council's decision to grant membership to Judy Willier on September 26, 2000. The Preliminary Decision issued by MSAT on May 15, 2003 determined that section 75(2)(a) of the *Metis Settlements Act* (or the "Act") is the sole basis on which Ms. Willier might be disqualified from settlement membership as she became registered as an Indian after the age of 18.

The issues addressed in this Order are as follows:

1. Does section 75 of the Act, specifically section 75(2)(a), infringe on the equality rights guaranteed by section 15(1) of the Canadian Charter of Rights and Freedoms?

2. If so, does such infringement constitute a reasonable limit prescribed by law and is it demonstrably justified in a free and democratic society pursuant to section 1 of the Canadian Charter of Rights and Freedoms?

3. In view of the conclusions reached by MSAT in relation to the first two questions above, what is MSAT's decision on the issue of Ms. Willier's application for settlement membership?

1. Does Section 75(2)(a) violate Section 15 of the Charter?

The Panel concluded that the Act clearly discriminates between Metis and other Canadians. Similarly, the Panel also found section 75 of the Act as being discriminatory between Ms. Willier and other persons based on age, sex, marital status and ethnicity (as determined by registration under the Indian Act). While section 75 and the overall intent of the Act may be ameliorative (its ameliorative intent being to provide a land base for Metis people, not Indians), section 75(2)(a) has the opposite effect by perpetuating the disadvantages of a particular group, namely female Metis who marry Indian men after the age of 18 and before 1985.

2. Is the Discriminatory Effect of Section 75(2)(a) a Reasonable Limit Pursuant to Section 1 of the Charter?

In the context of the case, the Panel is satisfied that the discriminatory effect of section 75(2)(a) is not reasonable or demonstrably justifiable pursuant to section 1 of the Charter. The effect of the section is to significantly impair the right to equality on the basis of age, sex, ethnicity and marital status. The Panel is not satisfied that there is proportionality between the effect of section 75(2)(a) and its goal.

3. MSAT's decision on Ms. Willier's application for settlement membership is as follows:

The Panel concluded that the prohibitions contained in the Act are in violation of the equality guarantees under the Charter and are therefore of no force and effect. Ms. Willier is entitled to apply for membership in the settlement.

The Panel ordered that Judy Willier be confirmed as a member of the Peavine Metis Settlement.

MSAT Order No. 161

Date Issued: 8 December 2004
Parties: Bonnie Anderson (Appellant) vs. East Prairie Metis Settlement and Larry Duane Sawan (Respondents)
Issue: Land Dispute

MSAT Order No. 161 deals with an appeal that challenged the East Prairie Metis Settlement Council's decision to take away the land and house from a member who was the successful applicant for a Posting of Available Land.

A conflict of Interest prevented the Settlement Council from making a decision on applications for the posting. It appointed a Conflict of Interest Committee to deal with the issue. The Committee chose Bonnie Anderson as the successful applicant. The Settlement Council, however, made a motion to rescind the decision of the Committee and granted the house and land to another settlement member, Larry Duane Sawan, after an alleged conflict of interest was raised regarding one of the Committee members. The Metis Settlements Land Registry registered a Provisional Metis title interest to Larry Duane Sawan.

The MSAT Land Panel confirmed the decision of the Conflict of Interest Committee to grant the interest to Bonnie Rose Anderson. It found that the Committee's decision was made in good faith, in accordance with the powers delegated to them by the Settlement Council, and that it was final and binding. The Panel ordered the Metis Settlements Land Registry to cancel Larry Duane Sawan's interest on the land and to register a Provisional Metis title interest in Bonnie Anderson's name. It recommended, however, that the East Prairie Metis Settlement attempt to find housing for Mr. Sawan at the earliest possible opportunity as he himself is in need of adequate housing.

MSAT Order No. 162

Date Issued: 20 December 2004
Parties: Yvonne Marie Boucher (Appellant) vs. Todd Baron White (Respondent) and Settlement Council for Kikino Metis Settlement (Affected Party)
Issue: Land Dispute

This Order deals with a divorce agreement between Yvonne Marie Boucher and Todd Baron White that was filed with the Court of Queen's Bench of Alberta. Part of the agreement states that the wife will have the matrimonial home located at the Kikino Metis Settlement. The home sits on 73.24 acres of land for which Mr. White is the title holder. Ms. Boucher attempted to get the title changed to her name. She was advised by the Kikino Settlement Administration, however, that she could live in the house for as long as she lives in the Settlement but the divorce agreement does not take away Mr. White's ownership of the home and the land base on his Metis title.

On February 23, 2004 Ms. Boucher appealed to the Tribunal as her ex-husband was refusing to sign over his Metis title to her. She believes that the house is attached to the land and since the house was awarded to her as part of the divorce agreement, she should be able to get Metis title to the land.

The MSAT Panel confirmed the validity of the divorce agreement and decided that Ms. Boucher has the right to have a Metis title to the land. The Tribunal directed the Registrar for the Metis Settlements Land Registry to transfer the Certificate of Metis Title from Mr. White to Ms. Boucher.

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